

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4

ENDEL RODRIGUEZ-CORTES,

Plaintiff,

v.

SUPERINTENDENCIA DEL CAPITOLIO,
et al.,

Defendants.

Civil No. 3:15-cv-01535 (JAF)

5
6 **MEMORANDUM OPINION & ORDER**

7 Plaintiff Endel Rodríguez-Cortés (“Rodríguez”) brings the instant suit pursuant to
8 42 U.S.C. § 1983 and additional claims under the laws and Constitution of Puerto Rico.
9 Mr. Rodríguez alleges that Defendants deprived him of a property interest without due
10 process of law when he was terminated from his employment. Defendants moved to
11 dismiss Mr. Rodríguez’s complaint pursuant to Federal Rules of Civil Procedure 12(b)(1)
12 and 12(b)(6). (ECF No. 11). Mr. Rodríguez timely opposed the motion. (ECF No. 12).

13 **Standard of Review**

14 When considering a motion to dismiss for lack of subject matter jurisdiction under
15 Rule 12(b)(1), the court considers the facts alleged in the complaint, but may also
16 consider “whatever evidence has been submitted, such as depositions and exhibits.”
17 *Carroll v. United States*, 661 F.3d 87, 94 (1st Cir. 2011) (internal quotation marks
18 omitted). Under Rule 12(b)(6) however, the court is limited to the facts alleged in the
19 complaint, except that the court may consider documents referred to or incorporated into

1 the complaint and certain other documents when their authenticity is not disputed.
2 *Watterson v. Page*, 987 F.2d 1, 3–4 (1st Cir. 1993).

3 Facts

4 From July 1, 2002, through September 17, 2014, Defendant Superintendence of
5 the Capitol¹ employed Mr. Rodríguez in the General Services Division, initially as an
6 assistant, then later as a Project Coordinator. Mr. Rodríguez is a member of the New
7 Progressive Party (“NPP”) and, in January 2013, when the Popular Democratic Party
8 (“PDP”) won majorities in the Puerto Rico House of Representatives and Senate, the
9 HOR designated Defendant Javier Vázquez as the new Superintendent of the Capitol.
10 Around twenty months later, in September of 2014, Defendant Vázquez terminated
11 Mr. Rodríguez’s employment.

12 Analysis

13 Defendants’ first argument is that Mr. Rodríguez’s complaint is barred by the
14 Eleventh Amendment. Mr. Rodríguez responds that he seeks no monetary relief against
15 Defendants in their official capacities, and seeks only injunctive relief against the
16 official-capacity defendants. The Eleventh Amendment bars suits in federal courts for
17 damages against any state without its consent. Eleventh Amendment immunity protects
18 the state and the arms or alter egos of the state. *Ainsworth Aristocrat Int’l Pty., Ltd. v.*
19 *Tourism Co. of the Commonwealth of P.R.*, 818 F.2d 1034, 1036 (1st Cir.1987).
20 Additionally, the Eleventh Amendment protects a state official from suits against him for
21 money damages in his official capacity. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985).

¹ In Spanish, “Superintendencia del Capitolio”.

1 The Eleventh Amendment does not, however, prevent suits against a state actor being
2 sued in his personal capacity, and neither does it bar official capacity suits against state
3 officers or actors for injunctive or declaratory relief brought pursuant to federal law.
4 *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984); *Mills v. Maine*,
5 118 F.3d 37, 54 (1st Cir. 1997)).

6 In his Fourteenth Amendment due process claim under § 1983, Mr. Rodríguez
7 seeks compensatory damages of no less than \$500,000 for back pay and front pay,
8 punitive damages, and interest. Mr. Rodríguez does not specify which of the defendants
9 he seeks the award of damages from; in fact, he states that “plaintiff is entitled to be paid
10 by defendants[.]” (ECF No. 1 at 5). As it applies to Defendant Vázquez in his official
11 capacity and the Commonwealth of Puerto Rico, Mr. Rodríguez’s request for monetary
12 relief, including back pay, front pay, and punitive damages, is barred by the Eleventh
13 Amendment. Mr. Rodríguez’s requested prospective relief of reinstatement, however,
14 remains before the court. *See Ex parte Young*, 209 U.S. 123, 159–60 (1908); *Will v.*
15 *Michigan Dept. of State Police*, 491 U.S. 58, 71 n. 10 (1989).

16 As a result, Mr. Rodríguez’s § 1983 claim against the Defendant Javier Vázquez
17 in his personal capacity and any injunctive or declaratory relief sought against the
18 Commonwealth Defendants and Defendant Vázquez in his official capacity remain
19 pending before this court.

20 The court now moves to Mr. Rodríguez’s claim that Defendants violated his
21 Fourteenth Amendment right by depriving him of his property interest in his employment
22 without due process. Under the Fourteenth Amendment, a state is prohibited from

1 discharging a public employee who possesses a property interest in continued
2 employment without due process of law. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S.
3 532, 538 (1985). We look to state law to determine whether a property interest in
4 continued employment exists. *Lasalle-Concepcion v. Toledo-Davila*, 569 F.3d 521, 522
5 (1st Cir. 2009) (citing *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972);
6 *Ruiz-Casillas v. Camacho-Morales*, 415 F.3d 127, 134 (1st Cir. 2005) (citations omitted).

7 “In a due process claim stemming from the termination of employment, ‘a public
8 employee must first demonstrate that he has a reasonable expectation, arising out of a
9 statute, policy, rule, or contract, that he will continue to be employed.’” *Acevedo–*
10 *Feliciano v. Ruiz–Hernandez*, 447 F.3d 115, 121 (1st Cir. 2006) (quoting *Wojcik v. Mass.*
11 *State Lottery Comm’n*, 300 F.3d 92, 101 (1st Cir. 2002). A person has a constitutionally-
12 protected property interest in continued public employment when he has a reasonable
13 expectation that his employment will continue. *See Rivera-Muriente v. Agosto-Alicea*,
14 959 F.2d 349, 352 (1st Cir.1992). Puerto Rico law recognizes two categories of public
15 employees: Confidential or trust employees and career employees. 3 L.P.R.A. § 1465.
16 Confidential or trust employees are “selected and removed at will”, 3 L.P.R.A. § 1465,
17 and have no constitutionally-protected property interest in the position. *Galloza v. Foy*,
18 389 F.3d 26, 34 (1st Cir. 2004). A career employee, however, does have a property
19 interest in his continued employment under Puerto Rico law. *Figueroa–Serrano v.*
20 *Ramos–Alverio*, 221 F.3d 1, 6 (1st Cir. 2000).

21 The Defendants assert that the Public Service Human Resources Administration
22 Act of the Commonwealth of Puerto Rico, Act No. 184, of 2004, as amended,

1 (hereinafter, “the Act”), does not establish a protected property interest for
2 Mr. Rodríguez’s employment with the Superintendence of the Capitol. (*See, generally*, 3
3 L.P.R.A. § 1461-1461p). Indeed, the Act excludes employees of the Legislative Branch,
4 3 L.P.R.A. § 1461e(1), and there is no dispute that the Superintendence of the Capitol is
5 an entity of the Legislative Branch. Accordingly, the Act itself does not apply to
6 Mr. Rodríguez’s claims.

7 Article III, § 9, of the Constitution of the Commonwealth of Puerto Rico,
8 however, permits the Legislative Assembly to adopt its own rules for the employment of
9 legislative employees. Defendant Superintendence of the Capitol promulgated its
10 “Regulation for the Management of the Superintendence of the Capitol’s Personnel”
11 (“Personnel Regulations”) in light of 3 L.P.R.A. § 1338, repealed in 2004 by the Act.²
12 Article V of the Personnel Regulations establishes that employees of the Superintendence
13 of the Capitol “will occupy exempt and temporary positions and may be hired and
14 removed at will.” Under Puerto Rico law, “an at-will employee lacks a reasonable
15 expectation of continued employment, and, thus, has no property interest in [his] job.”
16 *Gomez v. Rivera Rodríguez*, 344 F.3d 103, 111 (1st Cir. 2003) (internal punctuation
17 omitted) (citing *King v. Town of Hanover*, 116 F.3d 965, 969 (1st Cir. 1997)).

18 Mr. Rodríguez argues that the Personnel Regulations declaration of his
19 employment as “at will” does not necessarily preclude him from having a property

² Act No. 184, of 2004, repealed Act No. 5, of 1975. *Gonzalez Segarra v. CFSE*, 188 D.P.R. 252 (P.R. Offic. Trans. at *9). Like § 1461e, § 1338 excluded: (1) the Legislative Branch; (2) the Judicial Branch; (3) employees of government agencies or instrumentalities that operate as private enterprises or businesses; (4) employees of government agencies or instrumentalities entitled to bargain collectively through special laws, and (5) the University of Puerto Rico. 3 L.P.R.A. § 1338.

1 interest in his job. This court agrees. Though the Legislative Branch is excluded from the
2 Act, it is well-settled that as a matter of public policy, the merit principle is the guiding
3 principle of public service. *See Gonzalez Segarra v. CFSE*, 188 D.P.R. 252 (2013) (P.R.
4 Offic. Trans. at *8-10). Puerto Rico's "merit principle" is the "concept on which basis all
5 public employees shall be selected, promoted, retained and treated in all matters
6 concerning their employment based upon their capability and without discrimination."
7 3 L.P.R.A. § 1461(42) (2011). The merit principle applies to agencies otherwise
8 excluded from the Act. *See Aponte-Ramos v. Alvarez-Rubio*, 783 F.3d 905, 907-08 (1st
9 Cir. 2015) (analyzing the merit principle for employees of the State Insurance Fund
10 Corporation); *Sastre-Fernandez v. Superintendencia del Capitolio*, 972 F.Supp.2d 217,
11 219 (P.R.D. 2013) (analyzing the merit principle for employees of the Superintendence of
12 the Capitol). Accordingly, though the Personnel Regulations classify Mr. Rodríguez as
13 an "at-will" employee, this court must conduct a fact-specific inquiry to make that
14 determination. *Sastre-Fernandez*, 972 F.Supp.2d at 219 (citing *Galliza*, 389 F.3d at 29).

15 "The First Circuit has articulated a two-part test that examines whether: (1) the
16 employing agency's functions involve partisan political interests or concerns; and (2) the
17 employee's position resembles the role of a policymaker or office-holder such that party
18 affiliation would be an appropriate consideration in determining tenure." *Id.* (citing
19 *Mendez-Aponte v. Bonilla*, 645 F.3d 60, 65 (1st Cir. 2011)).

20 Mr. Rodríguez's complaint will survive a motion to dismiss if it alleges sufficient
21 facts to establish a plausible claim for relief. *See Fed. R. Civ. P. 12(b)(6); Ashcroft v.*
22 *Iqbal*, 556 U.S. 662, 670-78 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570

(2007)). In assessing a claim's plausibility, this court must construe the complaint in Mr. Rodríguez's favor, accept all non-conclusory allegations as true, and draw any reasonable inferences in favor of him. *Rodríguez-Ramos v. Hernández-Gregorat*, 685 F.3d 34, 39–40 (1st Cir. 2012) (citation omitted).

First, Mr. Rodríguez's employing agency was the Office of the Superintendent of the Capitol Building. (ECF No. 1). The office is charged with "the upkeep, maintenance, extension, construction and remodeling of the buildings and grounds of the Commonwealth's Capitol Building." 2 L.P.R.A. §§ 651–661. "The maintenance and upkeep of the Commonwealth's Capitol grounds hardly involves partisan political interests." *Sastre-Fernandez*, 972 F.Supp.2d at 219.

Second, Mr. Rodríguez was employed as a Project Coordinator. His role required him to coordinate and supervise construction projects at the Capitol. The court has not been provided with Mr. Rodríguez's job description; thus, there is no reason for this court to find Mr. Rodríguez's explanation of his job duties is anything different from what he asserts.

Here, Mr. Rodríguez has alleged that he worked as a non-political employee, that a new supervisor arrived from the opposing political party, that the new supervisor knew that Mr. Rodríguez was a member of the NPP, and that, as a result, the new supervisor terminated his employment. These facts state a plausible claim for relief and that is all that is required of the plaintiff at this stage.

The motion to dismiss Mr. Rodríguez's § 1983 claim against the Defendant Javier Vázquez in his personal capacity and any injunctive or declaratory relief sought against

1 the Commonwealth Defendants and Defendant Vázquez in his official capacity is
2 DENIED.

3 Finally, since his federal claim survives the motion to dismiss, supplemental
4 jurisdiction over Mr. Rodríguez's state-law claims remains proper. See 28 U.S.C.
5 § 1367(a).

6 **Conclusion**

7 **For the aforementioned reasons, Defendants' motion to dismiss (ECF No. 11)**
8 **is GRANTED IN PART and DENIED IN PART. Plaintiff's claims for money**
9 **damages, including back pay, front pay, and punitive damages, against Defendant**
10 **Vázquez in his official capacity and the Commonwealth of Puerto Rico (and the**
11 **Superintendencia del Capitolio) are DISMISSED. Plaintiff Rodríguez's § 1983**
12 **claim against the Defendant Javier Vázquez in his personal capacity and any**
13 **injunctive or declaratory relief sought against the Commonwealth Defendants and**
14 **Defendant Vázquez in his official capacity, along with the state law claims, remain.**

15 **IT IS SO ORDERED.**

16 San Juan, Puerto Rico, this 12th day of November, 2015.

17 S/José Antonio Fusté
18 JOSE ANTONIO FUSTE
19 U. S. DISTRICT JUDGE